

Remarks

Claims 1-2, 4-8, 10, 12, 19-20, 23-26, 28-30, 33, 35-37, 40-41, and 43-66 are presented for the Examiner's review and consideration. In this response, claims 1, 19, and 58 are amended, and claims 13-18, 22, 34, and 39 are cancelled. Applicant believes the claim amendments and accompanying remarks serve to clarify the present invention, and are independent of patentability. No new matter has been added.

35 U.S.C. §102

Claims 13-18, and 39, were rejected under 35 U.S.C. §102(b) as being anticipated by Jenkins, Jr. (U.S. 5,722,978), and under 35 U.S.C. §102(e) as being anticipated by Mansmann (U.S. 6,132,468). Without prejudice and without conceding the validity of the rejections, in order to expedite prosecution, Applicant has herein cancelled claims 13-18, 22, 34, and 39.

In light of the foregoing, Applicant respectfully requests reconsideration and withdrawal of the §102 rejections.

With respect to comments made in the Advisory Action mailed January 4, 2010, it is asserted that any device or component could be adjusted to a single patient's bone. Applicant respectfully submits, however, that "custom fabricated" is clearly distinct from "adjusted". As to the assertion that the claims do not define structure as to how the cutting guide is "custom fabricated for a single patient's bone", Applicant notes, at least, that the claims recite a custom guide fabricated based on "preoperative" or "patient imaging information", neither of which are suggested or taught by the cited references. The foregoing arguments additionally apply to the travelling guide of Mansmann.

Amendment After Final Rejection

Although the Examiner has discretion over entry of amendments submitted after final rejection, any amendment that will place the application either in condition for allowance or in better form for appeal may be entered. *See* MPEP 714.12. Any amendment after final rejection should require only a cursory review by the Examiner, such as an amendment cancelling claims, adopting Examiner suggestions, and/or removing issues for appeal. *See* MPEP 714.13 II.

Applicant respectfully requests entry of the amendments and remarks presented herein into the file for the above-identified application.

In this response, claims 13-18, 22, 34 and 39 have been cancelled, and claims 1 and 19 have been amended to incorporate subject matter from allowed claim 43.

Accordingly, the claim amendments made herein are acceptable for entry as, in accordance with the guidelines, the amendments only cancel claims and incorporate allowed subject matter.

Furthermore, all subject matter presented in the claims (as amended herein) has been previously presented. No new matter, which would require a further search by the Examiner, has been added.

Based upon all the above, it is clear that the amendments made herein require only a cursory review by the Examiner. Therefore, the instant Response places the application in condition for allowance or alternatively, in a better form for appeal, and should be entered.

Allowable Subject Matter

Applicant acknowledges with appreciation that claims 1-2, 4-8, 10-12, 19-20, 22-26, 28-30, 33-37, 40-41, and 43-66 were allowed.

Conclusion

In the light of the foregoing remarks, this application is now in condition for allowance and early passage of this case to issue is respectfully requested. If any questions remain regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

A fee of \$1,110 is believed to be due for a three month extension. However, please charge any required fee (or credit any overpayments of fees) to the Deposit Account of the undersigned, Account No. 500601 (Docket No. 780-A03-012C).

Respectfully submitted,

/ Paul D. Bianco /

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